

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2487 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VALJIBHAI KEHRABHAI DESAI

Versus

COMPETENT AUTHORITY

Appearance:

MR HR LATHIGARA for Petitioners
Mr Kamal Trivedi for Respondent No. 1
Mr H M Mehta, Senior Central Govt. Standing Counsel
for Union of India

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 30/07/96

ORAL JUDGEMENT

Leave to amend.

By way of this Special Civil Application, the petitioners seek direction to restrain the respondent - Gas Authority of India from entering into the

petitioners' land for laying another pipeline. By way of amendment, the petitioners have also challenged the Notification dated 20.1.1996 issued under Section 6 of the Petroleum and Minerals Pipelines (Acquisition etc.) Act, 1962 (hereinafter referred to as 'the Act of 1962')

2. The facts in brief are that the petitioners are the owners of lands bearing Survey No. 129, 132 and 133 in Village Karai, District Gandhinagar. In the year 1990, pipelines were laid by the respondent-Gas Authority of India in land bearing survey No. 129 and 132 having acquired the right of user under the Act of 1962. However, the owners of the land were served with a notice dated 20.3.1996 by the competent authority to submit their objections, if any, within a period of 20 days with respect to the Notification issued under section 3(1) of the Act of 1962. The petitioners submitted the objections stating that the entire proceedings were bad in law as the pipelines were laid in land bearing survey No. 129, 132 and 133 without prior notice under section 3(1) of the Act. The petitioners were heard on 1.5.1996. Notification under section 6 of the Act was issued on 20.5.1996. Intimation of the same was given on 24.5.1996. The Special Civil Application was filed on 3.4.1996 before this Court i.e. prior to the Notification under section 6. In view of this, the petitioner has challenged the said Notification by way of amendment.

3. Mr Narsinh Madhavbhai Parmar, competent authority, under the Act of 1962, has filed affidavit on behalf of the respondent-Gas Authority of India. After raising certain preliminary objections, it is stated that the respondent-Company which was already having the right of user in the portion of the land in survey No. 129 and 132, felt the necessity to lay the additional pipelines for supply of gas across the Sabarmati river. The job regarding installation of the pipeline was entrusted to a foreign Company having specialisation in drilling technical system called Horizontal Directional Drilling which is not available in the Country. It is stated that under the said drilling system, the drilling is done without actually digging the earth. In the process, entry of the pipeline is made by Pilot Drill from one bank of the river which goes below the river bed at great depth and then comes out at the other bank of the river. The entire path of the Pilot Drill while installing the gas pipeline is controlled by computerised remote control system which works on the principle of magnetic current. It is also submitted that though the entry point for the hole while installing the said pipelines is always

pre-decided the exit point is subject to some deviation and variation subject to geographical condition of the type of soil encountered by the Pilot Drill and the exact exit point on the other river bank can be reached only after Pilot Drill comes out of the surface. A sketch map has also been filed in which the portion of the land covered by thick blue line has been shown as the existing right of user from the other bank of Sabarmati river. With the help of Pilot Drill, gas pipe line was installed hoping and estimating that exit point of the said gas pipe line would come out on the other bank of Sabarmati river in the portion of land covered by the right of user at the point shown as blow-off point. However, the estimated destination and exit point was located beyond the land wherein there was already existing right of user of the respondent-Company. On account of this deviation/variation in locating exit point of the Pilot Drill, proposed line is required to be diverted from the actual exit point upto the point shown as blow-off point so as to cover the entire pipeline under the existing right of user. The respondent-Company is required to acquire the right of user for the land as shown in the map with dotted line. In view of this unavoidable situation, a necessity had arisen to acquire the right of user in land bearing survey No.156, 132, 130, 129 and 133. It is pointed out that the land owners of other survey No.156 and 130 have not objected to the acquisition. It is submitted that in view of this situation, there was no occasion for giving a notice under section 3 of the Act of 1962 prior to the actual penetration of the pipeline in land bearing survey No.129, 131 and 133.

3. I have heard Mr H R Lathigara, learned Advocate for the petitioner and Mr Kamal Trivedi, learned Advocate for the respondent. It is contended by Mr Lathigara that the Notification under section 3 as well as section 6 under the Act of 1962 are ex-facie illegal for the reason that the Notifications have been issued after the pipelines have already been laid in the land of the petitioners. In other words, the respondent authority has used the land without acquiring the right of user. It is also submitted that the right of user vest in the Central Government by virtue of provisions of sub-section 2 of section 6, only after declaration under sub-section (1) of section 6. Thus, the entire act of the respondent in laying the pipelines in the petitioners' land without the right of user being vested in the Central Government is illegal and without authority of law. On the other hand, Mr Trivedi, learned Advocate appearing for the respondent- Gas Authority submits that the job of laying

the pipelines for supply of the gas across Sabarmati, was carried out by specialised Drilling System known as Horizontal Directional Drilling. In the said process, the exit point was located beyond the estimated destination for the reasons beyond the control of human machinery. Thus in the peculiar circumstances, there was no occasion for giving notice under section 3 prior to actual use.

4. The Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 has been enacted to provide for acquisition of right of user in land for laying pipelines for transport of petroleum and minerals. Section 3 of the Act provides that whenever it appears to the Central Government that it is necessary in the public interest that for transport of petroleum or any minerals from one locality to another locality, pipelines may be laid by that Government or by any State Government or a Corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification, declare its intention to acquire the right of user therein. Section 5 provides for hearing of the objections. Section 6 provides for the declaration of acquisition of right of user. Sub-section 2 of section 6 provides that on publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the Central Government free from all encumbrances. Thus, on reading the provisions of sections 3, 5 and 6 of the Act of 1962, indicates that before the land is actually used, procedure under sections 3, 5 and 6 is required to be followed. The requirement of notice under section 3 is based on the principle that the party whose civil rights are affected, must have reasonable opportunity to state his case. Due process requires that except in case of emergency where the law permits summary act no person should be deprived of his private property without notice of hearing. However, there is known Maxim LEX NONCOGIT AD IMPOSSIBILIA, i.e. the law does not compel a man to do that which he cannot possibly perform. Thus, an act which is mandatory as part of the law, which has been rendered impossible by cause beyond control, a person charged with such duty, cannot be compelled to perform that act. The effect of non-performance of the act will depend on the nature of the proceedings, but that is a question for the Court to determine. In the instant case, it is apparent that there was no occasion to give notice under section 3 or declaration under section 6 and further that irreversible situation had arisen and also looking to the nature of the proceeding that it is only

an acquisition of right of user to limited extent, more particularly right of user in part of the nearby land has already been acquired, as such in my view, the impugned proceedings cannot said to have been vitiated. It has to be kept in view that the subject acquisition is in utmost public interest.

5. I am fortified in my view though not exactly in the same, but similar view taken by the Supreme Court in some of the cases. In the case of STATE OF U.P. vs. KESHAV PRASAD SINGH, reported in 1995(5) SCC 587, certain area was acquired for construction of P.W.D. office. During the construction, an encroachment was made upon 140 links of the land. Against the said encroachment, the party aggrieved, had approached the Civil Court which issued a mandatory injunction directing the P.W.D. to remove the encroachment. The State, carried the matter in appeal, simultaneously invoked its power of eminent domain and issued notification under section 4(1) of the Land Acquisition Act, which was published on 26.10.1972.. The said Notification came to be questioned in the High Court on the ground that the State Government had encroached upon the land and the mandatory injunction was issued for demolition of the compound wall and as such exercise of power under section 4(1) and so as section 6 of the Act was colourable exercise of power. The Apex Court held that as the land was needed for public purpose i.e. as part of public office, the State is entitled to exercise its power of eminent domain and would be justified in acquiring the land according to law. The Apex Court held that in view of the fact that the PWD office building was already constructed and a compound wall was needed to make the building safe and secure and construction was already made, which is a public purpose, the exercise of power of eminent domain is perfectly warranted under law. It can neither be said to be colourable exercise of power nor an arbitrary exercise of power. The Court found that public purpose was obvious as the compound wall was required to be retained to protect the safety of the office. In the case of General Manager Telecommunication v. Dr. M M Pradhan & Ors., reported in 1995 (8) JT 193 in a case where the land acquired for Telephone Exchange, the possession had already been taken and vested in the Government free from all encumbrances, many others accepted the award and some received the compensation under protest. The Apex Court held that the High Court was wholly unjustified in interfering with the acquisition proceedings. The Apex Court relied upon a decision rendered in the case of Satendra Prasad Jain & Ors. v. State of U.O. & Ors, reported in 1991 (4) SCC

531 wherein it is held that once a possession has been taken validity of the Notification under section 4(1) and declaration under section 6 cannot be gone into.

6. In the case of Krish Utpadan Mandi Samiti & Anr.

v. Makrand Singh & Ors., reported in 1991 (1) JT 487, the Apex Court held that once the land is vested in the Government absolutely free from all encumbrances, it is not open for the High Court to interfere in the Acquisition proceedings. It is not in dispute that in view of the Notification under section 6(1) of the Act of 1962, the right of user has been vested in the Central Government with respect to the land in question in view of this also no interference is called for by this Court in exercise of powers under Article 226 of the Constitution of India. The petitioner shall be entitled to compensation for acquisition of right of user on determination in accordance with law.

7. In view of the aforesaid, there is no merit in this Special Civil Application and the same is accordingly dismissed. Rule discharged. The interim relief stands vacated.

Learned Advocate for the petitioners submits that the interim relief granted by this Court may be continued for a period of two weeks. Keeping in view the larger public interest, I am not inclined to extend the interim relief granted and the prayer is accordingly rejected.

...